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CV 02-2110 #1

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOSHUA J. MILLER,

Plaintiff,

vs.

F/V MISTY MOON, Official  
No. 578511, including all her  
appurtenances,

Defendant.

) IN ADMIRALTY

) No

**C02-2110R**

) **SEAMAN'S COMPLAINT IN**  
) **REM FOR DAMAGES FOR**  
) **PERSONAL INJURIES,**  
) **MAINTENANCE AND CURE**  
) **AND WAGES**

Plaintiff alleges:

**FIRST CLAIM**

1. Plaintiff Joshua J. Miller is a seaman and brings this action pursuant to the provisions of 28 U.S.C. §1916 without prepayment of fees and costs and without deposit of security therefor.

2. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears. This is an admiralty and maritime claim within the meaning of Rule 9(h). This Court has

Seaman's Complaint in rem  
for Damages . . . 1

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1 jurisdiction pursuant to 28 U.S.C. §1333; and supplemental  
2 jurisdiction.

3         3. The defendant vessel is now, or during the pendency of  
4 this case will be within this district and within the  
5 jurisdiction of this Court.

6         4. Plaintiff alleges upon information and belief that at  
7 all times mentioned herein defendant Misty Moon, Inc. was and now  
8 is a corporation organized and existing according to law, and  
9 doing business within this district.

10         5. At all times mentioned herein, the F/V MISTY MOON,  
11 Official No. 578511, was an American flag vessel operating upon  
12 the navigable waters of the United States and the high seas.

13         6. Plaintiff alleges upon information and belief that at  
14 all times mentioned herein the said MISTY MOON was owned by  
15 defendant.

16         7. Plaintiff alleges upon information and belief that at  
17 all times mentioned herein the said vessel was manned, operated,  
18 maintained and controlled by defendant.

19         8. At all times mentioned herein, plaintiff was in the  
20 employ of defendant as a seaman and member of the crew in the  
21 service of the MISTY MOON.

22         9. On or about October 12, 1999 while plaintiff was  
23 engaged in the course of his duties in the service of said  
24 vessel, the MISTY MOON was unseaworthy in that, among other  
25 things, said vessel and her appurtenances were in a dangerous,  
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1 defective and hazardous condition; the place where plaintiff was  
2 required to work was unsafe; sufficient gear and equipment in  
3 proper working order were lacking; and the said vessel was  
4 otherwise so unseaworthy as to cause a wheelhouse chair to  
5 collapse, launching plaintiff down an adjacent stairway.

6 10. As a result of said incident, plaintiff was hurt and  
7 injured in his health, strength, and activity, sustaining injury  
8 to his body and shock and injury to his nervous system and  
9 person, all of which said injuries have caused and continue to  
10 cause plaintiff great mental, physical and nervous pain and  
11 suffering, and plaintiff alleges upon information and belief that  
12 said injuries will result in some permanent disability to  
13 plaintiff, all to his general damage according to proof.

14 11. As a further result of said incident, plaintiff was  
15 required to and did employ physicians and other health care  
16 providers for medical examination, care and treatment  
17 of said injuries, and plaintiff alleges upon information and  
18 belief that he may require such services in the future. The  
19 cost and reasonable value of the health care services received  
20 and to be received by plaintiff is presently unknown to him, and  
21 plaintiff prays leave to insert the elements of damages in this  
22 respect when the same are finally determined.

23 12. As a further result of said incident, plaintiff has  
24 suffered and will continue in the future to suffer loss of income  
25 in a presently unascertained sum, and plaintiff prays leave to  
26  
27  
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1 insert the elements of damage in this respect when the same are  
2 finally determined.

3 **SECOND CLAIM**

4 13. Plaintiff realleges and incorporates herein by  
5 reference paragraphs 1 through 12 of his First Claim hereinabove  
6 set forth.

7 14. On or about October 12, 1999, plaintiff became injured  
8 and disabled while in the service of the vessel.

9 15. Upon plaintiff's becoming injured and disabled as  
10 aforesaid, it became the duty of defendant to pay to plaintiff  
11 the expenses of his maintenance and cure, as well as his wages to  
12 the end of the period of employment for which plaintiff was  
13 engaged, but defendant failed and neglected to make payment  
14 thereof, despite knowledge of plaintiff's continuing disability.

15 16. By reason of the premises, plaintiff has been damaged  
16 in sums according to proof for maintenance and cure and unearned  
17 wages, the precise amounts of which are presently unascertained,  
18 and plaintiff prays leave to insert  
19 the elements of damages in this respect when the same are finally  
20 determined.

21 17. By reason of said neglect, plaintiff was obliged to  
22 engage the services of counsel and has incurred and will continue  
23 to incur attorneys' fees and expenses for which plaintiff is  
24 entitled to recover.

25 WHEREFORE, plaintiff prays judgment against defendant as  
26 follows:  
27  
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- 1           1.    For his general damages according to proof;
- 2           2.    For all expenses for health care providers according to
- 3 proof;
- 4           3.    For all loss of income past and future according to
- 5 proof;
- 6           4.    For maintenance, cure and unearned wages according to
- 7 proof;
- 8           5.    For reasonable attorneys' fees and expenses;
- 9           6.    For prejudgment interest according to general maritime
- 10 law;
- 11           7.    For plaintiff's costs of suit incurred herein;
- 12           8.    That plaintiff be adjudged the holder of a preferred
- 13 maritime lien against the F/V MISTY MOON, for the payment of the
- 14 sums due, and that the Court declare said lien to be superior to
- 15 all other liens which may exist against the vessel;
- 16           9.    That the F/V MISTY MOON be arrested, condemned,
- 17 and sold, with proceeds applied in payment of plaintiff's
- 18 claim;
- 19           10.   That at the sale of the vessel, plaintiff be
- 20 permitted to bid, without cash deposit, parts of his
- 21 judgment, accrued interest, costs and attorneys' fees, up to
- 22 the full amounts thereof; and
- 23
- 24

25       ///

26       ///

1           11. For such other and further relief as the Court  
2 deems just.

3           DATED this 9<sup>th</sup> day of October, 2002.

4                           ANDERSON, CONNELL & MURPHY

5  
6                             
7                           DAVID B. ANDERSON WSBA #5528  
8                           Attorneys for Plaintiff

V E R I F I C A T I O N

I, Joshua J. Miller, declare under penalty of perjury  
under the laws of the United States of America, as follows:

1. I am the plaintiff in the above-entitled action.

2. I have read the foregoing complaint, and the same  
is true to the best of my knowledge, information and belief.

Executed at PETERSBURG, Alaska, this 7<sup>th</sup> day of  
October, 2002.

  
Joshua J. Miller